



THE ATTORNEY GENERAL OF TEXAS

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AUSTIN 11, TEXAS

April 2, 1953

Hon. Horace Houston, Chairman
House State Affairs Committee
53rd Legislature
Austin, Texas

Letter Opinion No. MS-14.

Re: Issuance of negotiable
revenue bonds by State
Parks Board.

Dear Mr. Houston:

In your letter of March 18, 1953, you request the opinion of the Attorney General on the following question concerning House Bill No. 541, which bill is now being considered by your committee:

"Will the State Parks Board have the authority to issue revenue bonds for the purpose of building these resorts, lodges, and hotels if House Bill 541 is enacted into law; and also, do they have this authority under any existing law?"

In House Bill No. 541, it is provided that the State Parks Board may acquire park sites and improve, beautify, and equip such parks. It is further provided in Section 2 that in payment therefor said Board is authorized "to issue its evidences of indebtedness for such sum or sums of money and upon such conditions as may to said Board be deemed advisable, bearing interest at a rate not to exceed six (6%) per cent per annum, and as security for the payment thereof, said Board may pledge its rents, revenues and incomes from such improvements and/or any fees, rents or revenues from any source other than appropriations made by the State Legislature (,) and in furtherance thereof may have full authority to make concession contracts of all kinds or character which in the judgment of said Board might be desirable; and profitable." (Parenthetical underscoring added)

It is interesting to note that this bill is a verbatim copy of Chapter 187, Acts 43rd Legislature, Regular Session, 1933 (Art. 6070b V.C.S.) with three minor exceptions: (1) the comma shown in the parenthetical insertion above appears in the 1933 act; (2) the word any appears in the 1933 act instead of all, as shown above; and (3) the period

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at the end of Section 2 of the 1933 act has been changed to a semi-colon and the words and profitable have been added by House Bill No. 541.

Under House Bill No. 541 the State Parks Board is empowered "to issue its evidences of indebtedness." You wish to know whether this bill would authorize the issuance of revenue bonds. By "revenue bonds" it is assumed that you refer to negotiable bonds secured by net revenues.

It is well established that negotiable bonds may not be issued without express authority therefor. In the leading case of Lasater v. Lopez, 110 Tex. 179, 217 S.W. 373, 376 (1919), the Supreme Court of Texas stated the following:

"Without special authority, a court charged with the administration of the business affairs of a county is without the power to issue negotiable securities, depriving the county of true defenses against the creditor. It is not a power to be implied. It does not exist unless expressly conferred by law. Such is the established doctrine in this State, and has been from an early time."
(Emphasis added throughout)

In the case of Keel v. Pulte, 10 S.W. 2d 694, 697 (Tex. Com. App. 1928), the court, in accordance with the well-established doctrine announced in the Lasater case, held the following:

"The power to issue negotiable paper for public improvements, or for money borrowed for the purpose of acquiring such improvements, is a power which is regarded as being beyond the scope of power of the governing body of a city or county unless it be specially granted."

Thus, unless House Bill No. 541 expressly authorizes the issuance of negotiable revenue bonds, such authority does not exist thereunder. An examination of Section 2 of such bill shows that the State Parks Board is authorized to issue its evidences of indebtedness. Neither the word "negotiable" nor the word "bond" appears anywhere in the statute. If there is any authority under the bill to issue negotiable bonds, such authority necessarily would be implied. As the authority to issue negotiable bonds must be expressly granted and cannot be implied, it follows that the bill does not

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empower the State Parks Board to issue its negotiable revenue bonds.

Your attention is called to the provisions of Article 6077j V.C.S., dealing specifically with the Palo Duro Canyon State Park. In that statute, the State Parks Board was granted the authority to renew and extend certain outstanding indebtedness and "to evidence the renewed indebtedness by the issuance of its bonds, notes or warrants." This statute expressly covers the issuance of bonds. House Bill No. 541 does not.

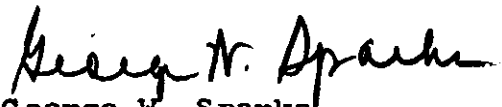
You are, therefore, advised that House Bill No. 541 does not authorize the State Parks Board to issue negotiable revenue bonds. This conclusion renders unnecessary a consideration of the question whether the construction of resorts, lodges, and hotels would constitute a park improvement within the purview of the bill, and we express no opinion thereon.

Although this opinion is confined to a consideration of the provisions of House Bill No. 541, we deem it appropriate to say that, in view of the similarity of its provisions with the 1933 act, the principles announced herein would likewise be applicable to said 1933 act.

We also would like to call your attention to a possible conflict in the caption of House Bill No. 541 and the body of the Act. The clause in the caption immediately preceding the emergency clause reads: "providing that the authority granted herein shall be limited to two years." In the body of the act, it is provided in Section 1 that the authority "herein given to purchase is limited to two years from the effective date of the Act." In any event, the caption and the body should be harmonized in this respect.

Yours very truly,

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By 
George W. Sparks
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